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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re P.R., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.R.,

Defendant and Appellant.

B293713

(Los Angeles County
Super. Ct. No. 18LJJP00395A)

APPEAL from orders of the Superior Court of Los Angeles County, Karin Borzakian, Juvenile Court Referee. Conditionally affirmed and remanded with directions.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father W.R. appeals the juvenile court's jurisdictional findings and dispositional orders concerning his infant son, P.R., based upon the adjudication of a subsequent petition pursuant to Welfare and Institutions Code section 342.¹ Father contends the court's findings are not supported by substantial evidence, that the Los Angeles County Department of Children and Family Services (Department) failed to inquire of relatives identified by mother O.E. as having knowledge of P.R.'s possible Indian heritage under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.), and that the Department's notices to the tribes omitted material information about mother's relatives. Mother has not appealed. Therefore, we find father's challenge to the jurisdictional findings nonjusticiable. We also conclude the order removing P.R. from father is supported by substantial evidence. We conditionally affirm and remand with directions regarding ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

The factual background of this case is basically the same as that involved in father's previous appeals involving his three older children with a different mother (case Nos. B292121 & B294990).

Eight-month-old P.R. came to the attention of the Department in May 2018, after the Department received a report of a domestic violence incident between mother and father. On May 18, father pushed mother to the ground, and mother sprained her wrist. P.R., and mother's two-year-old daughter from a previous relationship, L.E., were present. According to mother, she and father were arguing, father pushed her, and she lost her balance and fell. She told the social worker father had pushed her once before. But she told police there had been five unreported incidents of domestic

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

violence between her and father. Mother declined an emergency protective order. Father denied he pushed mother.

There was another domestic violence incident between mother and father on June 22, 2018. P.R., L.E., and father's three older sons with a different mother were in the home. Father and mother argued, and mother punched father in the face and scratched him. Father's eight-year-old son witnessed the incident, and his 13-year-old son called police. Mother was arrested, but father refused an emergency protective order. P.R. and L.E. were detained from mother's care. P.R. was placed with father, and L.E. was placed with maternal great-grandmother, Dorothy B. Mother and father did not live together at the time. They shared custody of P.R., and mother spent the night at father's home several nights per week. However, father was P.R.'s primary caregiver.

Father admitted to multiple domestic violence incidents where mother was the aggressor, but denied ever hitting mother. He told the Department he was no longer in a relationship with mother, but allowed her to be in his home to coparent P.R. Father admitted mother punched him in the face in the June incident, causing his lip to bleed. Regarding the May domestic violence incident, father admitted he pushed O.E. "to get her off of me." Regarding the June incident, he admitted that both his eight-year-old son and infant P.R. witnessed the incident.

Father's eight-year-old son saw mother punch father in the mouth. He had seen father "push [mother] around when they are mad." He admitted "it happen[s] a lot."

Father's six-year-old son denied witnessing the incident, but overheard father and mother screaming, and learned that mother had punched father "and broke his mouth." He told the Department investigator he sometimes saw father push mother.

Father's 13-year-old son heard arguing and screaming, so he called 911. He had called 911 in the past to report other incidents of domestic violence.

On June 25, 2018, mother pled no contest to one count of disturbing the peace, was placed on probation, and was ordered to participate in a domestic violence program. That same day, the court issued a criminal protective order protecting father from mother for a period of three years, and personally served the order upon mother. The order required that mother have "no personal, electronic, telephonic, or written contact" with father. It also required her to stay 100 yards away from father.

Father has a history with the Department. The Department received a referral in 2010 that father and the mother of his older sons were arguing, and that the mother stabbed herself. There were also numerous referrals in 2013 related to father's drug use and sales, gang activity, weapons in the home, and two domestic violence incidents, one where father was a perpetrator and one where he was the victim. The 2013 domestic violence incidents were witnessed by his older sons and a half sibling, and father refused an emergency protective order, and did not want his then-girlfriend prosecuted. There was also a 2016 referral where father was arrested for domestic violence after he slapped an ex-girlfriend in front of her children.

Father has an extensive criminal history, spanning 1992 to 2016, with numerous arrests for robbery (with multiple sustained juvenile petitions), vehicle theft (with one sustained petition), an arrest for receiving stolen property, a conviction for being a gang member carrying a loaded firearm in a public place (for which father served time in prison after violating his probation); numerous other drug sale, gun, and gang-related arrests, some resulting in convictions for which father did time in prison, and

arrests for other offenses such as vandalism, assault, and parole violations. Father was also arrested for domestic violence in 2011 and 2016.

Father also has unresolved mental health issues. He had diagnoses for schizophrenia and bipolar disorder, but was not taking his prescribed psychotropic medication. He also tested positive for hydrocodone at a very high level, and admitted he was using his prescribed pain medication to self-medicate his mental health issues.

On June 26, 2018, the Department filed a dependency petition with allegations under subdivisions (a) and (b) of section 300, based on the May 2018 domestic violence incident, and mother and father's history of domestic violence. An amended dependency petition was later filed, adding allegations concerning the June domestic violence incident.

On June 27, 2018, father filed a parental notification of Indian status form stating that he may have Indian ancestry. Mother also completed a form indicating that she may have Cherokee ancestry through "child's [maternal great-grandfather]."

At the June 27, 2018 detention hearing, P.R. was released to mother and father under the supervision of the Department, with family maintenance services. The court entered a no contact order between mother and father, and ordered the Department "to effectuate custody agreement/exchange between mother and father."

At the detention hearing, mother informed the court maternal great-grandmother, Dorothy B. is the person "most knowledgeable" about mother's Indian ancestry. The court ordered the Department to contact Dorothy B., and to give notice to the Cherokee tribes and Bureau of Indian Affairs. The court also ordered the Department to contact paternal relatives to explore father's Indian ancestry.

According to the Department's July 27, 2018 jurisdiction/disposition report, the Department spoke with mother, and maternal grandmother, Tameka W., to obtain more information about mother's possible Indian ancestry. Mother told the Department she was not sure about her father's ancestry, but would contact her paternal aunt for information about her father. According to Tameka, her father (maternal great-grandfather) died in 1998, and was born in Louisiana. She told the Department to contact her mother, Dorothy, to obtain more information.

On June 29, 2018, the Department spoke with maternal great-grandmother, "Dorothy [S.]" (who is also identified as Dorothy B. in the Department's reports). According to Dorothy, "her husband's mother was Cherokee." On July 2, 2018, she informed the Department that her husband was born on April 16, 1919, in Elizabeth, Louisiana. His father's name was Abe.

On July 27, 2018, father filed an amended parental notification of Indian status form reflecting that he has no Indian ancestry.

At the July 27 adjudication hearing, father denied that he pushed mother, or that she fell during the May incident, and testified that he had "never" pushed her. Regarding the June incident, father claimed mother pushed him and that he "busted his lip." She had never hit him before. He testified he was aware the juvenile court had entered a stay away order between him and mother, but denied knowing whether the criminal court had made any stay away orders in mother's criminal case. Father had been abiding by the court's order, but did "not know" whether he would resume his relationship with mother in the future.

Father also denied he had ever been arrested for domestic violence. He had never participated in any domestic violence programs.

Mother entered a no contest plea, and the juvenile court sustained allegations under subdivision (b) of section 300 as to both parents as follows: “The children[’s] . . . mother . . . and [father] have a history of engaging in physical altercations in the children’s presence. In May 2018, the father pushed the mother, in the presence of the [L.E.], causing mother to fall. On prior occasions, the father pushed the mother. In June 2018, the mother struck the father, in the presence of [P.R.’s] half-sibling . . . causing the father’s mouth to bleed. [¶] Such conduct on the part of the . . . father and the mother places the children at substantial risk of serious physical harm.”

Based on father’s amended ICWA form, and representations to the court, the court found that ICWA did not apply to father’s side of the family. ICWA compliance was determined to be “outstanding” as to mother. The court continued the case for disposition until October 5, 2018.

P.R. remained released to father. The court reminded the parties of its stay away order, and the criminal protective order issued in mother’s criminal case, and told mother and father they were to have no contact.

According to a September 28, 2018 last minute information for the court, mother and father were not abiding by the stay away orders. Father was seen at mother’s house, and both mother and father had been seen at domestic violence class together. On September 22, 2018, mother was discovered at father’s home during an unannounced home visit. Father initially lied to the social worker and denied mother was in the home, but eventually admitted she was there. Father told the social worker there were no problems between them, and that he never wanted a restraining order.

On October 1, 2018, the Department sought a removal order for P.R. and his half sister. The order was granted that same day, and the children were removed on October 4, 2018.

At the October 5, 2018 disposition hearing, the Department informed the court it was waiting for responses from the tribes. ICWA notices had been sent to the Blackfeet, Navajo, and Cherokee tribes, and a response card had been received from the Bureau of Indian Affairs. The notices identified maternal great-grandmother only as “Dorothy [S.]” The disposition hearing was further continued for ICWA compliance.

On October 9, 2018, the Department filed a supplemental petition pursuant to section 387 based on mother’s and father’s violation of the protective order.

According to the Department’s October 2018 detention report, mother told the Department she and father intended to have the criminal protective order “rescinded so that they could be together.” On October 9, 2018, the criminal protective order was modified by the criminal court to remove the “no contact” provisions.

An October 10, 2018 last minute information for the court addressed ICWA notice. The Department had heard from the Eastern Band of Cherokee Indians that P.R. was not eligible for membership. It was awaiting a response from the Cherokee Nation, which had indicated in email correspondence that it may take 100 days from receipt of the notice to respond.

In a later report, the Department reported that the United Keetoowah Band of Cherokee Indians determined that P.R. was not an Indian child.

At the October 10 detention hearing on the supplemental petition, the court detained P.R. in foster care finding that mother and father had violated the juvenile court’s stay away order and

criminal protective order. The court ordered that its stay away order would remain in full force.

When father spoke with the Department on October 24, he reported he had not had any contact with mother following the October 10 hearing. He admitted having contact with mother in September. He claimed he was not aware of the juvenile court's stay away order, or the criminal protective order. Nevertheless, he was currently abiding by the orders so he could have the children returned to him. He admitted he wanted to continue his relationship with mother.

Father's older sons admitted that mother had come to their home multiple times in September.

The subsequent petition was adjudicated on October 31, 2018, and a combined disposition hearing on the original and subsequent petition was also held.²

The section 342 petition was sustained as to mother pursuant to a no contest plea, and found true as to mother and father as follows: "The children[s] mother . . . and [father] violated a criminal protective order by having contact with each other. The children are current dependents of the Juvenile Court due to domestic violence between the mother and the . . . father. Such conduct by the parents places the children at substantial risk of physical harm."

² County counsel requested that the section 387 petition be deemed a section 342 petition. All counsel submitted, and that same day, the Department filed a subsequent petition pursuant to section 342, based on the same facts as the section 387 petition, violation of the criminal protective order.

The court removed P.R. from mother and father, and ordered them to participate in reunification services.

Regarding ICWA, the court found that father had no Indian ancestry. As to mother, the court found that P.R. was not an Indian child, as the tribes that responded to the notices found him ineligible, and the remaining tribes had not responded although sufficient time had lapsed since the notices were sent.

Father filed a timely notice of appeal.

DISCUSSION

1. Jurisdictional and Dispositional Orders

Father contends substantial evidence does not support the juvenile court's section 342 findings and orders, arguing that his violation of the criminal protective order did not place P.R. at risk of serious harm. He also contends that substantial evidence does not support the removal of P.R. from his care.

The focus of dependency proceedings is on the protection of children. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) To acquire jurisdiction over a child, a juvenile court need only "find that one parent's conduct has created circumstances triggering section 300." (*Id.* at p. 1491.) "[I]t is commonly said that a jurisdictional finding involving one parent is 'good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent.'" ' [Citation.]" (*Id.* at p. 1492.)

Even if we considered reversing the jurisdictional finding as to father, the juvenile court would retain jurisdiction over P.R. based on the sustained, and unchallenged, allegations against mother. Therefore, father's attack on the jurisdictional finding relative to his conduct alone is nonjusticiable. (*In re I.A., supra*, 201 Cal.App.4th at p. 1490 ["An important requirement for justiciability is the availability of 'effective' relief—that is, the

prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status."].)

And, in any event, the findings are supported by substantial evidence. It is well settled that the failure to protect a child from the substantial risk of encountering domestic violence supports dependency jurisdiction. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Father has an extensive unresolved history of domestic violence with multiple partners, and was at times a victim, and at times a perpetrator. Many of the incidents occurred in the presence of children. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 [juvenile court need not wait until a child is seriously injured to assume jurisdiction].)

Given the longstanding problems with domestic violence, father's denial and minimization of the violence, and his failure to abide by court orders, we find the removal order is supported by substantial evidence.³ (§ 361, subd. (c)(1); *In re Heather A., supra*, 52 Cal.App.4th at p. 193.)

2. ICWA

Father contends the Department's ICWA notices did not contain adequate information because maternal great-grandmother was identified only as Dorothy S., whereas Department reports reflected she also was also called Dorothy B. He also contends the Department failed to inquire about P.R.'s maternal great-great-grandmother, who maternal great-grandmother said was Cherokee,

³ Father does not argue the court abused its discretion in ordering that he participate in various programs, other than to say the orders are an abuse of discretion if jurisdiction is not supported. Given our findings that jurisdiction is supported, this claim has no merit.

and that she was not listed in the ICWA notices. Also, there was no inquiry of P.R.'s maternal great-aunt who mother said had information about maternal grandfather.

Congress enacted ICWA “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) ICWA requires notice to Indian tribes “in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights ‘where the court knows or has reason to know that an Indian child is involved.’” (*In re Isaiah W.*, at p. 8.) The child’s tribe must receive “notice of the pending proceedings and its right to intervene.” (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

“ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry; nor do the controlling federal regulations. . . . But ICWA provides that states may provide ‘a higher standard of protection to the rights of the parent . . . of an Indian child than the rights provided under [ICWA]’ . . . , and long-standing federal guidelines provide ‘the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.’” (*In re H.B.*, *supra*, 161 Cal.App.4th at pp. 120-121, fn. and citations omitted.)

Under state law, former section 224.3⁴ imposes on the juvenile court and the Department “an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child” (§ 224.2, subd. (a).) If there is “reason to believe that an

⁴ The substantive provisions of former section 224.3 have been renumbered as section 224.2, effective January 1, 2019, pursuant to Statutes 2018, chapter 833, sections 5 and 7.

Indian child is involved in a proceeding” further inquiry regarding the possible Indian status of the child “shall” be made, including “[i]nterviewing . . . extended family members” to obtain the necessary information to notice the tribes. (*Id.*, subd. (e)(1).) Similarly, the California Rules of Court impose on the court and Department “an affirmative and continuing duty to inquire whether a child is or may be an Indian child” (Cal. Rules of Court, rule 5.481(a).)

Notices to the tribes must contain sufficient information to allow the tribe to conduct a meaningful review of its records to determine the child’s eligibility for membership. (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705.) Former section 224.2⁵ requires the notices to include “[a]ll names known, and current and former addresses of the Indian child’s biological mother, biological father, maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.”

Father has not made any showing, in his briefs or otherwise, that any of the identified relatives possesses any useful knowledge about P.R.’s possible Indian ancestry. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) Nevertheless, to the extent that father is acting as a surrogate for the tribe, to achieve the purpose of providing notice sufficient to allow the tribe to determine whether P.R. is an Indian child, we will conditionally affirm the dispositional order, and remand with instructions that the Department comply with its duty to inquire of maternal great-aunt

⁵ The substantive provisions of former section 224.2 have been renumbered as section 224.3, effective January 1, 2019, pursuant to Statutes 2018, chapter 833, sections 4 and 7.

and maternal great-great-grandmother, and any resulting duty to provide notice to the tribes. (See, e.g., *In re N.G.* (2018) 27 Cal.App.5th 474, 484.) Moreover, the Department must send a new notice with maternal great-grandmother's name listed as "Dorothy [S.], also known as Dorothy [B]."

DISPOSITION

The dispositional order is conditionally affirmed. The matter is remanded to the juvenile court with directions to comply with the ICWA inquiry provisions of the Welfare and Institutions Code and California Rules of Court as to mother, including a new notice properly identifying maternal great-grandmother, and, if as a result of that inquiry, there is reason to know P.R. is an Indian child, with any resulting notice obligations.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.